

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

HOW TO FILE YOUR AMENDED COMPLAINT IN FEDERAL COURT

Check the Western District's web site at www.nywd.uscourts.gov for copies of many of the Court's forms and other useful information.

IMPORTANT: This packet includes the standard complaint form. Although you are not required to submit your amended complaint on the complaint form, **you must provide all the information requested on that form.** If you choose not to use the official form, **be sure that you entitle your document "Amended Complaint" and provide all the information that is requested on the official form and that you enclose the proper number of correctly filled-out supporting documents.**

GENERAL INFORMATION ABOUT AMENDED COMPLAINTS

- A. Rule 15 of the Federal Rules of Civil Procedure governs the filing of amended and supplemental pleadings. According to Rule 15(a):

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

Please note that an amended complaint completely replaces your original complaint and you therefore must include **all** of the necessary allegations in the amended complaint.

- B. You must file an **original** amended complaint, and if you are proceeding as a poor person in this case, an exact copy of your amended complaint for each defendant you name, and one extra copy. For example, if you name two defendants, you must file the original and three copies of the amended complaint (one original, plus a copy for each of the two defendants plus one extra copy). **All copies of the amended complaint must be identical to the original.** You should also keep an additional copy of the amended complaint for your records.
- C. Your amended complaint must be legibly handwritten or typewritten, in blue or black ink if possible, preferably on the enclosed forms. If you need additional space to answer a question, you may attach additional pages. However, additional pages should be used only if absolutely necessary; **your amended complaint should be specific but as brief as possible.** Please refer to Rules 8(a)(2) and 10(b) of the Federal Rules of Civil Procedure for the requirements governing the format and content of your amended

complaint. Failure to comply with these requirements may lead to a court order rejecting your amended complaint until it does comply.

THE COMPLAINT FORM

- A. Please add the word “Amended” to the first page of the enclosed form complaint (or, if you do not use the complaint form, title your pleading “Amended Complaint.” (If you have already filed an amended complaint, and you are now amending that amended complaint, this one should be called “Second Amended Complaint.”))
- B. **Section 1: Caption** — This section requires you to list your name as the plaintiff and the names of **all** of the defendants. **Do not use abbreviations such as "etc." or "et al."** Also, note that **only** those defendants whose names are listed in this Section (or in the caption if you do not use the official forms) will be considered by the Court as defendants.
- C. **Section 2: Statement of Jurisdiction, Venue and Nature of Suit** — Federal Court is a court of limited jurisdiction and thus only certain types of cases may be brought in this Court. Therefore, this section requires you to identify the basis for your bringing this action in federal court. It also requires you to state why you have brought it in this particular federal court (why venue is proper in the Western District). You must also describe the nature of your suit. If you do not use the official forms, your amended complaint must have a section which contains all of this information.
- D. **Section 3: Parties to This Action** — This section requires you to identify the parties to the lawsuit. (You should set out in Section 1: Caption only the parties’ names and perhaps their titles (such as Dr. or Commissioner)). In Section 3: Parties, you must provide each party's name, official position (if relevant) and address, and if you are seeking service by the U.S. Marshals, you may provide any other information which may assist in identifying or locating the parties. If you do not use the official forms, your amended complaint must have a section which identifies and locates the parties in this way.
- E. **Section 4: Previous Lawsuits** — This section requires you to provide detailed, accurate and thorough information about all previous lawsuits you have filed regarding the same facts involved in this case. If you cannot provide **all** of the details requested, you must provide as much information as you can. **Deliberate misrepresentation or omission of information is perjury and is punishable by law.**
- F. **Section 5: Statement of Claim** — This section, which is divided into separate sub-sections for each claim, requires you to tell the Court when each alleged incident occurred, which defendant(s) were involved and specifically what each of the defendant(s) did to you. You must provide specific facts regarding each claim; these facts should demonstrate to the Court how your rights were violated and by whom they were violated. **You must give facts only.** Please refer again to Rule 8(a)(2) and 10(b) of the Federal Rules of Civil Procedure regarding how to present your claim. Your amended complaint must not contain legal arguments or case citations.

Your must also state the federal basis for each claim (such as the U.S. Constitution, a specific federal statute, diversity jurisdiction or pendent jurisdiction), and describe what relief you are seeking for each claim.

- G. If you wish a jury trial, check "yes" on the bottom of the last page of the amended complaint (and check "yes" in the JURY DEMAND box on the Civil Cover Sheet.) If you do not use the official forms, you must state in the body of your amended complaint that you demand a jury trial.
- H. Sign the amended complaint before a notary public, if one is available to you. If not, your signature at the end of your amended complaint under penalty of perjury is adequate.
- I. **Supplemental Complaints** — You may file a **supplemental complaint** only if you **request permission of the Court by motion with notice to the opposing parties**. A supplemental complaint may only address events which have occurred since the time the original complaint was filed and which are in some way related to the original allegations. Refer to Rule 15(d) of the Federal Rules of Civil Procedure for the requirements for supplemental complaints.

FILING YOUR AMENDED COMPLAINT

Once your papers are complete, send them to the Clerk's Office, at one of the following addresses:

United States District Court Clerk
2120 U.S. Courthouse
100 State Street
Rochester, New York 14614-1387
(585) 263-6263

United States District Court Clerk
304 U.S. Courthouse
68 Court Street
Buffalo, New York 14202-3498
(716) 551-4211 or (716) 551-5759

SERVICE OF THE AMENDED COMPLAINT *Refer to Rules 4 and 5 of the Federal Rules of Civil Procedure.*

Rule 5 of the Federal Rules of Civil Procedure governs the requirement of service of pleadings and other papers. An amended complaint must be served.

NOTE: If you are seeking or have been granted permission to proceed *in forma pauperis* (see 28 U.S.C. § 1915), you may not cause copies of your papers to be served on any named defendant, either by yourself or at your request by the United States Marshals Service, until the Court directs service of the amended complaint and the manner in which it is to be accomplished.

If your original complaint has already been served, and the adverse parties have answered and are represented by counsel, you may effect service by delivering or mailing a copy of the amended complaint to the attorneys representing such parties, or to the parties themselves.

If you have not received permission to proceed *in forma pauperis*, but have instead paid the filing fee up front, you may choose to serve the summons and amended complaint upon the new defendants yourself. (This does

not mean by you directly, however; as a party to the action, you are prohibited from serving the papers yourself.) After you file your action with the Court, have a professional process server (or a friend, although this may lead to service issues later if a mistake is made) take or mail a copy of a summons and the amended complaint to each defendant.

- (1) If the summons and amended complaint are personally served, the server must be over 18 years of age, and not a party to the action. After handing the summons and amended complaint to a defendant, the server **must** complete and file an Affidavit of Service, stating the date and time of service and describing the person who was served.
- (2) If the server chooses to use the Waiver of Service provisions of Fed.R.Civ.P. 4(d), follow the instructions in the Rule carefully and prepare a Notice and a Waiver form according to the model Forms 1A and 1B in the Appendix of Forms to the Federal Rules of Civil Procedure.
- (3) **If you are not proceeding as a poor person, you may arrange for the United States Marshal to serve your papers for a small fee.** Note: The Marshal will only serve your amended complaint if you **first** obtain a judicial order directing such service. If you want the Marshal to serve your summons and amended complaint, obtain an Application for Order Directing Service by U.S. Marshal from the Clerk's Office or the Western District web site, complete it, and send it to the Clerk of the Court, who will forward it to the Judge to whom your case has been assigned for approval. When the Judge signs your order, you will be mailed a copy. Take or send a copy of the signed order to the Marshal, with your summonses and copies of your amended complaint, and they will assist you with further arrangements.

PRO SE STAFF ATTORNEYS

If you have general questions about procedures, you may contact the Pro Se Staff Attorneys at one of the above addresses for information. You may also ask the Pro Se Staff Attorneys for current information about how to obtain forms from the Court web site and how to access the Federal Rules and other legal information on the Internet. (Most public libraries now offer Internet access to library patrons.)

NOTE: The Pro Se Staff Attorneys can only provide technical and procedural information and certain forms such as for filing motions and affirming service; they cannot assist you with the substantive law governing your lawsuit or give you legal advice about your case.